

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**EXCERPT OF DAY FORTY-THREE OF JURY TRIAL**  
**PART I JURY INSTRUCTIONS BY THE COURT**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Monday, April 6, 2015  
9:59 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

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8 - and -

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14 On Behalf of the Government

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On Behalf of the Defendant

P R O C E E D I N G S

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 9:59 a.m.)

THE CLERK: Be seated.

THE COURT: Good morning, counsel.

COUNSEL IN UNISON: Good morning.

THE COURT: Good morning, jurors.

THE JURORS: Good morning, your Honor.

THE COURT: I have two major responsibilities in a trial such as this. The first is almost over, and that is to preside over the case and to make whatever procedural or evidentiary rulings are necessary in the course of the trial. And you've seen that we've been doing that. The other major responsibility is at this stage of the proceedings to give you what we call these instructions in the principles of law that pertain to the matters you've heard about and about which you will have to make some decisions. So I'm now going to give you these instructions about the law that applies to these matters.

You can think of this as sort of a short course in all the law you will need to know in order to decide the issues in the case. So you shouldn't have to resort to any other ideas that you might have from any other sources about what the law is or might be with respect to these issues, but take it that what I will tell you is a complete and accurate summary of the principles of law that are to be applied in the case. It is my

1 duty to set forth these principles fully and accurately without  
2 regard to any personal or private views I might have about the  
3 wisdom or prudence of these principles or whether there might  
4 be different or additional ones that could be applied, but  
5 rather to tell you what the law is with respect to these  
6 matters.

7           You have a similar duty to accept and faithfully apply  
8 these principles sensibly without any regard to any personal or  
9 private views you might have about the wisdom or prudence of  
10 these principles or whether there might be different or  
11 additional ones that could be applied. Instead, accept that  
12 these are the principles of law that apply to these matters,  
13 consider these instructions sensibly as a whole and apply them  
14 faithfully.

15           These instructions will be lengthy but we will give  
16 you a written copy of them for the jury room so that you may  
17 review them and be reminded of them any time you wish to look  
18 at them while you're deliberating.

19           I'm going to talk about two general areas, and I'm  
20 going to divide my time in doing it. First I'm going to talk  
21 about the principles that relate to the particular offenses or  
22 crimes that are charged by the indictment in this case. That  
23 is, I will tell you what the government is required to prove in  
24 order to convict the defendant of the charges that are made  
25 against him. After I've done that, the lawyers for each side

1 will have their opportunity to present their closing statements  
2 to you. I think it will be helpful to you in listening to the  
3 closing statements to have understood from me what the  
4 principles of law are that relate to the proof of the charges.  
5 After the lawyers' closing statements, I'll have some more to  
6 say to you about the manner in which you will think about the  
7 evidence, discuss it and make some judgments about it.

8 Because some of the offenses that are at issue in this  
9 case are rather involved, let me begin by giving you a bit of  
10 introduction to federal criminal law. Federal criminal law  
11 consists of laws enacted by Congress that define certain acts  
12 as criminal. In enacting a criminal statute, Congress  
13 specifies what act or acts constitute the particular crime. At  
14 a trial when it is shown by the evidence that a defendant has,  
15 in fact, committed the defined conduct, then the crime may be  
16 said to have been proven, and where it has not been shown by  
17 the evidence that the defendant committed the defined conduct,  
18 the crime has not been proven.

19 Typically, the language of a federal criminal statute  
20 follows a common pattern or formula that can be stated briefly  
21 this way: Whoever does such and such shall be punished. Let  
22 me give you a silly hypothetical example to illustrate the  
23 grammar of federal criminal statutes. The statute might say,  
24 hypothetically, "Whoever knowingly sells an item of apparel  
25 without providing a certificate of origin, shall be punished."

1 I deliberately use a silly example because I want you to focus  
2 on the structure of criminal statutes right now rather than the  
3 substance.

4 In seeking to determine whether someone has committed  
5 the hypothetical crime, we would look at what the evidence  
6 established that the person had done and whether the person had  
7 done those things outlined in the statute as necessary to  
8 constitute the offense. So in the example, there would be  
9 three things -- and we would refer to them as the elements of  
10 the offense -- three things that would have to be shown: The  
11 person knowingly sold an item of apparel without providing a  
12 certificate of origin.

13 If those three things or elements were established as  
14 facts, then the government would have proved the crime. If all  
15 three things, all three things, are not established by the  
16 evidence, that is, one or more of them has not been  
17 established, then the crime has not been proven.

18 Sometimes Congress wants to be sure that a particular  
19 term in a statute is understood in a particular way, and it may  
20 include a full or partial definition of that term; for example,  
21 in our illustration, the statute might say, "The term 'item of  
22 apparel' shall include any garment or thing worn as clothing or  
23 adornment, but shall not include hospital gowns." When  
24 Congress provides a specific definition, then that definition  
25 is what controls for the purpose of the statute. When Congress

1 does not provide a specific definition to the terms of the  
2 statute, the general rule is that words are to be understood in  
3 accordance with their ordinary and usual meaning.

4 Sometimes a criminal statute will provide for  
5 alternate ways in which the offense could be committed. To  
6 return to our example, the statute might say, "Whoever  
7 knowingly sells an item of apparel without providing a  
8 certificate of origin, or advertises for sale an item of  
9 apparel for which no certificate of origin has been provided,  
10 shall be punished."

11 In this formulation there are two ways the statute  
12 might be violated: First, it could be proved that a person  
13 knowingly sold an item of apparel without a certificate of  
14 origin; second, it could be proved that the person advertised  
15 for sale an item of apparel for which no certificate of origin  
16 had been given.

17 Proof of either alternative would suffice to  
18 constitute the crime. But in such a case because the verdict  
19 of the jury must always be unanimous as to the elements of the  
20 offense, it would be necessary for all the members of the jury  
21 to agree that one or the other version had been proved beyond a  
22 reasonable doubt and to be unanimous about that.

23 Sometimes a federal criminal statute will contain what  
24 we call a "jurisdictional element." The federal government has  
25 those powers that are granted to it by the Constitution. The

1 federal government's power to enact a criminal statute is  
2 limited to those matters within its proper jurisdiction. For  
3 example, the Constitution grants the federal government power  
4 to regulate interstate and foreign commerce, and consequently,  
5 the federal government can enact criminal laws that pertain to  
6 the regulation of interstate and foreign commerce.

7 But selling or advertising an item of apparel might or  
8 might not have interstate or foreign effect or impact. In  
9 order to govern particular conduct that may be either federal  
10 or non-federal, depending on the circumstances, Congress may  
11 prescribe what we call a "jurisdictional element" to bring the  
12 matter within federal jurisdiction; thus, the statute might  
13 say, as some federal statutes do, "Whoever sells in interstate  
14 commerce an item of apparel without a certificate of origin  
15 commits the offense." Tying it to the specific power to  
16 regulate is sometimes a necessary jurisdictional element of a  
17 crime.

18 So I use this oversimplified illustration because I  
19 want you to see the patterns that can occur in the statutes  
20 that are at issue in this case. And I hope it will help you to  
21 hear and understand the instructions about those particular  
22 statutes.

23 Before I get to the instructions about the particular  
24 statutes, there are some other general matters I want to  
25 address. As I mentioned in my preliminary instructions to you



1 at the beginning of this case, there are various ways in which  
2 a person can be criminally liable for an offense. The first is  
3 when the person has personally and directly performed the acts  
4 that constitute the offense. A person who has actually done  
5 the acts which constitute the offense is said to have  
6 personally committed what we call the "substantive offense."  
7 To use our example, a person who personally sold an item of  
8 apparel without providing a certificate of origin would be said  
9 to have directly committed the substantive offense.

10 A person who has not personally done all of the acts  
11 that constitute the crime may still be criminally responsible,  
12 however. One circumstance in which this may be true is if the  
13 person has aided or abetted another to commit the crime. A  
14 person may be found guilty of a federal offense if he aids or  
15 abets another person in committing that offense. In most of  
16 the counts in the indictment, the defendant is charged with  
17 aiding and abetting another person, namely, Tamerlan Tsarnaev,  
18 to commit a substantive offense.

19 To "aid or abet" means intentionally to help someone  
20 else commit the offense. To establish aiding and abetting, the  
21 government must prove beyond a reasonable doubt, first, that  
22 someone else committed the charged crime; second, that the  
23 defendant consciously shared the other person's knowledge of  
24 the underlying criminal act intended to help him, and willfully  
25 took some part in the criminal endeavor seeking to help it

1       succeed.

2               An act is done willfully if it is done voluntarily and  
3       intentionally.

4               A person who aids and abets another to commit a crime  
5       need not be present when the underlying criminal act is  
6       performed or be aware of all the details of its commission to  
7       be guilty of aiding and abetting, but a general suspicion that  
8       an unlawful act may occur or that something criminal is  
9       happening is not enough.

10              Mere presence at the scene of a crime and knowledge  
11       that a crime is being committed are also not sufficient to  
12       establish aiding and abetting. To be guilty of aiding and  
13       abetting, a person must act in some way to affirmatively assist  
14       another person to commit a crime.

15              In every count where the defendant is charged both as  
16       a principal actor and as an aider or abetter, you may find him  
17       guilty if you unanimously conclude beyond a reasonable doubt  
18       that he was either a principal or an aider or abetter or both.  
19       You need not be unanimous as to whether he was a principal as  
20       opposed to an aider or abetter, but to find him guilty each of  
21       you must conclude that he was one or the other or both.

22              It can also be a crime to conspire or agree with one  
23       or more other persons to work together to commit a substantive  
24       offense. This is the crime of conspiracy. When proven,  
25       conspiracy to commit an offense is a separate crime from the

1 substantive crime. The objective of the conspiracy might be to  
2 commit the substantive crime.

3 In our illustration, two or more people could agree or  
4 conspire together to sell an item of apparel without a required  
5 certificate of origin. That would be a separate crime from the  
6 act of selling.

7 In this case, three counts of the indictment present  
8 allegations of the crime of conspiracy in various forms under  
9 various statutes. In each of those counts the conspiracy is  
10 alleged to have had as its object the commission of certain  
11 identified substantive crimes. Specifically, the defendant is  
12 charged in Counts 1, 6 and 11 of conspiring with Tamerlan  
13 Tsarnaev to commit certain federal crimes.

14 A criminal conspiracy is an agreement to achieve an  
15 unlawful end or a lawful end by unlawful means. The agreement  
16 can be spoken or unspoken. It does not have to be a formal  
17 agreement which the people involved have actually sat down  
18 together and worked out all the details, although that might be  
19 the case.

20 To prove a criminal conspiracy, the government must  
21 prove beyond a reasonable doubt that those who are involved  
22 shared an understanding of the unlawful nature of the crime  
23 they were agreeing to commit. Mere similarity of conduct among  
24 people or the fact they may have been associated with each  
25 other, and even discussed common aims in interest, does not

1 necessarily establish proof of the existence of a conspiracy  
2 although, of course, you may consider those factors.

3 Each of the three conspiracy counts charges the  
4 defendant with conspiring to commit a different federal crime;  
5 accordingly, you must consider each of those conspiracy counts  
6 separately. You may find the defendant guilty on any  
7 particular conspiracy count only if you unanimously conclude  
8 beyond a reasonable doubt that the defendant conspired with  
9 another to commit the federal crime charged in that particular  
10 count and not some other crime.

11 Count One charges the defendant with conspiracy to use  
12 a weapon of mass destruction. For you to find the defendant  
13 guilty of that charge, you must unanimously find that the  
14 government has proved the following two elements beyond a  
15 reasonable doubt: First, that the defendant and another agreed  
16 to use a weapon of mass destruction; and, second, that the  
17 defendant knowingly and voluntarily joined in the agreement  
18 intending that the crime of using a weapon of mass destruction  
19 be committed.

20 Count Six charges the defendant with conspiracy to  
21 bomb a place of public use. For you to find the defendant  
22 guilty of that charge, you must unanimously find the government  
23 has proved the following two elements beyond a reasonable  
24 doubt: First, that the defendant agreed with another to bomb a  
25 place of public use; and, second, that the defendant knowingly

1 and voluntarily joined in that agreement intending that the  
2 crime of bombing a place of public use be committed.

3 Count Eleven charges the defendant with conspiracy to  
4 maliciously destroy property. For you to find the defendant  
5 guilty of that charge, you must unanimously find the government  
6 has proved the following two elements beyond a reasonable  
7 doubt: That the defendant agreed with another to maliciously  
8 destroy property; and, second, the defendant knowingly and  
9 voluntarily joined in that agreement intending that the crime  
10 of malicious destruction of property be committed.

11 The government must prove both the defendant intended  
12 to join the agreement and that the underlying crime be  
13 committed. The government does not have to prove that a  
14 defendant knew all the details of the conspiracy, that he  
15 participated in every act of the agreement, or that he played  
16 any particular role. It only needs to prove that the defendant  
17 knew of and joined in the agreement with the intent that its  
18 unlawful purpose be achieved.

19 A defendant's intent and knowledge can be proved with  
20 either direct or circumstantial evidence, including inferences  
21 from the surrounding facts and circumstances, such as the acts  
22 done by the defendant that furthered or advanced a conspiracy's  
23 objective.

24 A person who has no knowledge of a conspiracy but may  
25 happen to act in a way somehow to further the objective of the

1 conspiracy does not become a coconspirator. He must knowingly  
2 and intentionally join in the agreement with the purpose and  
3 intention to do something unlawful.

4 For the crime of conspiracy, the government does not  
5 have to prove that the conspiracy succeeded or that its  
6 objective was achieved. The crime of conspiracy is complete  
7 when the conspirators form their agreement to commit the  
8 underlying offense.

9 Each of the three conspiracy counts in this indictment  
10 also alleges a third element the government must prove beyond a  
11 reasonable doubt; namely, that the charged conspiracy resulted  
12 in the death of a person named in the respective count of the  
13 indictment. The government has alleged in these counts that  
14 each of the charged conspiracies resulted in the death of four  
15 people: Krystle Marie Campbell, Officer Sean Collier, Lingzi  
16 Lu, and Martin Richard.

17 For you to find that a charged conspiracy resulted in  
18 death, the government must prove beyond a reasonable doubt that  
19 the charged conspiracy resulted in the death of at least one of  
20 those people. You should consider each alleged death  
21 separately, and your determination of which death, if any,  
22 resulted from the charged conspiracy must be a unanimous one.

23 A death results from a charged crime if the death  
24 would not have occurred if the crime had not been committed.

25 In addition to the three counts in the indictment that

1 charged the defendant with conspiracy, there are 27 counts that  
2 charged the defendant with committing substantive offenses. In  
3 all of those substantive counts, the defendant is charged both  
4 as a principal and as an aider and abetter. And I've  
5 instructed you as to what must be proved to prove him guilty as  
6 an aider and abetter.

7 Additionally, a person may be found guilty of a  
8 substantive crime by his having been a coconspirator with  
9 another person who in furtherance of the conspiracy commits a  
10 crime that is within the scope of the conspiracy; in other  
11 words, a defendant who is found to have knowingly joined in a  
12 conspiracy may be held responsible for criminal acts committed  
13 by his fellow conspirators.

14 Any member of a conspiracy who commits a crime during  
15 the existence or life of the conspiracy in order to further or  
16 advance the objectives of the conspiracy is, in effect, acting  
17 as an agent for all the other members of the conspiracy, doing  
18 what they all expect to be done to achieve the results they've  
19 agreed to pursue. That person's illegal activity may therefore  
20 be attributed to the other coconspirators even if they have not  
21 directly participated in their fellow conspirators' illegal  
22 act.

23 You may find the defendant guilty of the substantive  
24 crime as charged in the indictment, even if he did not  
25 personally commit or participate in the actual commission of

1 the crime, if you are convinced that the crime was committed by  
2 a coconspirator of the defendant acting in furtherance of the  
3 conspiracy. For instance, if you find beyond a reasonable  
4 doubt that the defendant was guilty as a member of the  
5 conspiracy charged in Count One, which is conspiracy to use a  
6 weapon of mass destruction resulting in death, then you may,  
7 although you're certainly not required to, find the defendant  
8 guilty of the substantive crime that was committed by a  
9 coconspirator who was working to accomplish the objective of  
10 the conspiracy.

11 To find the defendant guilty under this theory, you  
12 must be convinced of five things beyond a reasonable doubt:  
13 First, that the defendant was guilty of being a conspirator in  
14 the unlawful conspiracy; second, that another member of the  
15 conspiracy committed the substantive crime, say, use of a  
16 weapon of mass destruction resulting in death as charged in the  
17 particular count; third, that that coconspirator who committed  
18 the crime did so in furtherance of the work of the conspiracy;  
19 fourth, that the defendant was at that time still an active  
20 member of the conspiracy and had not withdrawn from  
21 participating in it.

22 Sometimes people may join in a conspiracy and then  
23 later leave or abandon the agreement. If that should happen,  
24 the person is no longer responsible for what is done thereafter  
25 by coconspirators.



1           And finally, the final element is that the defendant  
2     could reasonably have foreseen that his coconspirator would  
3     have committed the substantive crime in furtherance of the  
4     conspiracy.

5           In sum, and the conditions are that the defendant has  
6     to be guilty of the conspiracy with somebody else; somebody  
7     else in the conspiracy committed the crime; the crime was  
8     committed in furtherance of the joint agreement to violate the  
9     law; that the defendant was then still an active participant in  
10    the conspiracy; and last, that the defendant could reasonably  
11    have foreseen that one of his coconspirators would have done  
12    what was done to commit the crime.

13           If you find all of those things beyond a reasonable  
14    doubt, then you may find one conspirator guilty both of the  
15    conspiracy under the relevant counts and of the substantive  
16    offenses committed by the coconspirator.

17           I will now explain the elements for each of the  
18    substantive counts. Each count of the indictment charges the  
19    defendant with having committed a separate offense. Each count  
20    and the evidence relating to it should be considered  
21    separately, and a separate verdict will be returned as to each  
22    count. Your verdict of guilty or not guilty of an offense  
23    charged in one count should not control your decision on any  
24    other count.

25           I'm going to group the counts by the nature of the

1 charge that is made because many of them repeat the same  
2 statutory basis for asserting the fact of the crime.

3 Counts Two, Four, Twenty-Three, Twenty-Five,  
4 Twenty-Seven and Twenty-Nine charge the defendant with the  
5 crime of using a weapon of mass destruction. As you've heard,  
6 the defendant is charged in Count One with conspiracy to use a  
7 weapon of mass destruction. He's also charged in six counts  
8 with using a weapon of mass destruction and/or aiding and  
9 abetting Tamerlan Tsarnaev's use of a weapon of mass  
10 destruction. So these are the substantive offenses related to  
11 the conspiracy that is charged in Count One.

12 To find the defendant guilty of the use of a weapon of  
13 mass destruction either by direct commission or as an aider and  
14 abetter, you must unanimously find the government has proved  
15 each of the following three elements beyond a reasonable doubt:  
16 First, the defendant knowingly used a weapon of mass  
17 destruction; second, that it was knowingly used against a  
18 person or against real or personal property within the United  
19 States; and, third, that such property was used in interstate  
20 or foreign commerce or in an activity that affects interstate  
21 or foreign commerce; or, alternatively, that the offense or the  
22 results of the offense affected interstate or foreign commerce.

23 So you'll see from that third element there's a  
24 jurisdictional element, as I previously described it, and it is  
25 pled in the alternative. There are two ways of proving the

1 third element, which is that property was used in interstate or  
2 foreign commerce or in an activity that affected it, or that  
3 the offense or its results affected interstate or foreign  
4 commerce. If you choose an alternative, you must be unanimous  
5 as to which you choose.

6 Some of the defined terms: A "weapon of mass  
7 destruction" for these purposes means a destructive device  
8 which is defined by statute as any explosive bomb. "Knowingly"  
9 in this context, as in others, means that the act was done  
10 voluntarily and intentionally and not because of a mistake or  
11 an accident. "Interstate commerce" means commerce between any  
12 point in a state and any point outside that state. It is only  
13 necessary the government prove beyond a reasonable doubt that  
14 the crime had some minimal effect on interstate commerce. It  
15 is not necessary to find the defendant knew or intended that  
16 his actions would affect interstate commerce.

17 Each of the six counts that charge the defendant with  
18 the use of a weapon of mass destruction relates to a different  
19 alleged destructive device.

20 Count Two charges the defendant used a weapon of mass  
21 destruction and/or aided and abetted the use of a weapon of  
22 mass destruction in front of Marathon Sports on April 15, 2013.  
23 The indictment and verdict form both refer to the bomb alleged  
24 as Pressure Cooker Bomb No. 1.

25 Count Two alleges an additional element the government

1 must prove beyond a reasonable doubt; namely, the offense  
2 resulted in the death of Krystle Marie Campbell.

3 Count Four charges the defendant used and/or aided and  
4 abetted the use of a weapon of mass destruction in front of the  
5 Forum restaurant on April 15, 2013. The indictment and verdict  
6 form refer to the bomb alleged as Pressure Cooker Bomb No. 2.

7 Count Four also alleges an additional element the  
8 government must prove beyond a reasonable doubt; namely, that  
9 the offense resulted in the death of Lingzi Lu and/or Martin  
10 Richard.

11 For you to find the defendant guilty of the additional  
12 element, you must unanimously find beyond a reasonable doubt  
13 that the offense charged in Count Four resulted in the death of  
14 at least one of these two people, and you should consider each  
15 separately. Your determination of which death, if either,  
16 resulted from the offense must be unanimous.

17 Count Twenty-Three charges the defendant with use of a  
18 weapon of mass destruction and/or aiding and abetting the use  
19 of a weapon of mass destruction that is alleged to have  
20 exploded on Laurel Street on April 19th, 2013. The indictment  
21 and verdict form refer to the bomb alleged as Pressure Cooker  
22 Bomb No. 3.

23 Count Twenty-Five charges that the defendant used a  
24 weapon of mass destruction and/or aided and abetted the use of  
25 a weapon of mass destruction that is alleged to have exploded

1 on Laurel Street on April 19th, 2013. The indictment and  
2 verdict form refer to this bomb alleged as Pipe Bomb No. 1.

3 Count Twenty-Seven charges the defendant used a weapon  
4 of mass destruction and/or aided and abetted the use of a  
5 weapon of mass destruction that is alleged to have exploded on  
6 Laurel Street on April 19, 2013. The indictment and verdict  
7 form refer to the bomb alleged as Pipe Bomb No. 2.

8 Count Twenty-Nine alleges the defendant used a weapon  
9 of mass destruction and/or aided and abetted the use of a  
10 weapon of mass destruction on Laurel Street on April 19, 2013,  
11 that did not explode. The indictment and verdict form refer to  
12 the bomb alleged as Pipe Bomb No. 3.

13 Counts 3, 5, 24, 26, 28 and 30 charge the defendant  
14 with the crime of using or carrying a firearm during and in  
15 relation to a crime of violence. In addition to being charged  
16 with six counts of using a weapon of mass destruction as I've  
17 just summarized, the defendant is charged with six  
18 corresponding counts of using and carrying a firearm during and  
19 in relation to that crime of violence. I will refer to these  
20 as the "use and carry counts."

21 The use and carry counts separately charge that the  
22 defendant used and carried a bomb, a pistol or both during and  
23 in relation to each charged offense of the use of a weapon of  
24 mass destruction.

25 Although the use and carry charges and the

1 corresponding use of a weapon of mass destruction charges  
2 involve some overlapping conduct, under the law they are two  
3 different crimes.

4 To find the defendant guilty as a principal of a count  
5 charging that he used or carried a firearm during and in  
6 relation to a crime of violence, you must unanimously find the  
7 government has proved the following two elements beyond a  
8 reasonable doubt: First, the defendant committed the  
9 underlying crime of violence specified in the count that you're  
10 considering; and, second, that the defendant knowingly used or  
11 carried a firearm -- the firearm specified in the particular  
12 count during and in relation to that underlying crime.

13 To find the defendant guilty of aiding and abetting  
14 the use and carrying of a firearm during and in relation to the  
15 crime of violence, you must unanimously find the government has  
16 proved the following four elements beyond a reasonable doubt:  
17 First, another person committed the underlying crime of  
18 violence specified in the count you're considering; that the  
19 person knowingly used or carried a firearm during and in  
20 relation to the commission of that underlying crime; third, the  
21 defendant facilitated either the use of the firearm or the  
22 commission of the underlying crime; and, fourth, that the  
23 defendant did so with the advance knowledge that the other  
24 person would commit the underlying crime and would use or carry  
25 a firearm during and in relation to it.

1           Again, to do something knowingly in this context means  
2   to do it voluntarily and intentionally and not because of  
3   mistake or accident.

4           A "firearm" in this context means any weapon which  
5   will or is designed to expel a projectile by the action of an  
6   explosive. A pellet or BB gun is not a firearm under the  
7   relevant statute. A firearm includes a destructive device  
8   which in turn means any explosive bomb. To use a firearm means  
9   to employ the firearm actively, such as to brandish, display,  
10  strike with, fire or attempt to fire, or detonate or attempt to  
11  detonate. To carry a firearm means to move or transport the  
12  firearm on one's person or in a vehicle or a container. A  
13  firearm need not be immediately accessible.

14          The words "during" and "in relation to" are to be  
15  given their ordinary and usual meaning. At a minimum, it means  
16  the firearm must have had some purpose or effect with respect  
17  to the underlying crime of violence. If a firearm is present  
18  simply as a result of coincidence or accident, it cannot be  
19  said that it was used or carried in relation to the underlying  
20  crime of violence. A firearm must have facilitated or have had  
21  the potential to facilitate the underlying offense.

22          To have advance knowledge that another person will use  
23  or carry a firearm during and in relation to the crime of  
24  violence means knowledge at a time when the individual could  
25  have attempted to alter the plan or withdrawn from the

1 enterprise. Knowledge of the firearm may, but does not have  
2 to, exist before the underlying crime commences. It is  
3 sufficient if the knowledge is gained in the midst of the  
4 underlying crime as long as the individual continues to  
5 participate in the crime and has a realistic opportunity to  
6 withdraw after acquiring the necessary knowledge.

7           You may but are not required to infer that an  
8 individual had sufficient advance knowledge if you find the  
9 individual continued his participation in the crime after  
10 learning of the other person's possession of a firearm.

11           Most of the use and carry counts include additional  
12 elements as to which the government bears the burden of proof  
13 beyond a reasonable doubt. For example, some counts charge  
14 that the firearm was brandished or that it was discharged or  
15 that it was a destructive device or that the defendant caused  
16 and/or aided another person in causing someone's death through  
17 the use of the firearm, and the killing was a murder. So I'll  
18 define some of those terms for you.

19           To brandish a firearm means to display all or part of  
20 the firearm or otherwise to make the presence of the firearm  
21 known to another person in order to intimidate that person  
22 regardless of whether the firearm was directly visible to the  
23 person. A destructive device, as I've told you, is any  
24 explosive bomb.

25           "Murder" in this context is the unlawful killing of a



1 human being with malice aforethought. "Malice aforethought"  
2 means an intent at the time of the killing willfully to take  
3 the life of a human being or an intent willfully to act in a  
4 callous and wanton disregard of the consequences to human life.  
5 Malice aforethought does not necessarily imply ill will, spite  
6 or a hatred toward the individual killed.

7 In determining whether a victim was unlawfully killed  
8 with malice aforethought, you should consider all the evidence  
9 concerning the facts and circumstances preceding, surrounding  
10 and following the killing which may shed light on the question  
11 of intent.

12 A willful, deliberate, malicious and premeditated  
13 killing is a murder. A killing committed in the perpetration  
14 of or an attempt to perpetrate any arson, robbery or other  
15 murder is a murder. A killing perpetrated from premeditated  
16 design unlawfully and maliciously to affect the death of any  
17 human being other than the person who is killed is also a  
18 murder. Premeditation contemplates a temporal dimension which  
19 need only be an appreciable amount of time. This may vary from  
20 case to case. The key element is the fact of deliberation of  
21 second thought.

22 If in accordance with these instructions you find the  
23 defendant guilty of using or carrying a firearm during and in  
24 relation to a particular crime of violence or of aiding and  
25 abetting another to do so, you may also find the defendant also

1 aided and abetted that other person in causing someone's death  
2 through the use of the firearm even if the defendant did not  
3 personally use the firearm or encourage the killing.

4 To find this, you must unanimously find beyond a  
5 reasonable doubt the defendant was a willing participant in the  
6 underlying crime of violence, the defendant intended the  
7 killing take place, and that a co-participant caused the  
8 victim's death through the use of a firearm.

9 You may also find the defendant aided and abetted  
10 another in causing someone's death through the use of a firearm  
11 if you unanimously find beyond a reasonable doubt that, A, the  
12 defendant was a willing participant in the underlying crime,  
13 the underlying crime of violence was an arson, robbery or  
14 murder, and a co-participant caused the victim's death through  
15 the use of a firearm.

16 Count Three charges the defendant knowingly used or  
17 carried a firearm during and in relation to the crime of  
18 violence that is charged in Count Two. You'll see that these  
19 several use and carry counts all relate to one of the  
20 substantive counts of the use of a weapon of mass destruction,  
21 as I've told you. So you'll see them paired: Three goes with  
22 two, Five with Four and so on.

23 So as to Count Three, the indictment and verdict form  
24 identify the firearm for the use counts as Pressure Cooker Bomb  
25 No. 1. The crime charged in Count Two, use of a weapon of mass

1 destruction, qualifies as a crime of violence.

2 In Count Three, the government also alleges additional  
3 elements that must be proved beyond a reasonable doubt: that  
4 the alleged firearm was discharged, that the alleged firearm  
5 was a destructive device, and that the defendant in the course  
6 of committing the offense charged in Count Three caused the  
7 death of Krystle Marie Campbell through the use of the firearm  
8 and the killing was a murder, or aided and abetted another in  
9 causing the death of Krystle Marie Campbell through the use of  
10 the firearm and the killing was a murder.

11 Count Five charges the defendant knowingly used or  
12 carried a firearm during and in relation to the crime charged  
13 in Count Four and/or aided and abetted another in doing so.

14 The indictment and verdict form identify the firearm  
15 for these counts as Pressure Cooker Bomb No. 2. The crime  
16 charged in Count Four qualifies as a crime of violence.

17 In Count Five, the government alleges three additional  
18 elements that it must prove beyond a reasonable doubt: That  
19 the alleged firearm was discharged, that the alleged firearm  
20 was a destructive device, and that the defendant in the course  
21 of committing the offense charged in Count Five caused the  
22 death of Lingzi Lu and/or Martin Richard through the use of the  
23 firearm and the killing was a murder, and/or aided and abetted  
24 another in causing the death of Lingzi Lu and/or Martin Richard  
25 through the use of the firearm and the killing was a murder.

1 Your finding as to which death, if either, was caused through  
2 the use of the firearm must be unanimous.

3 Count Twenty-Four charges the defendant knowingly used  
4 or carried a firearm during and in relation to the crime  
5 charged in Count Twenty-Three and/or aided and abetted another  
6 in doing so. The crime charged in Count Twenty-Three qualifies  
7 as a crime of violence.

8 The indictment alleges that two firearms were used  
9 and/or carried during and in relation to the offense charged in  
10 Count Twenty-Three. They're identified in the indictment and  
11 the verdict form as Pressure Cooker Bomb No. 3, and a Ruger P95  
12 9mm semiautomatic handgun. To find the defendant guilty of  
13 this use and carry charge, you must unanimously find beyond a  
14 reasonable doubt that the defendant used or carried at least  
15 one of the two alleged firearms during and in relation to the  
16 underlying crime of violence and/or aided and abetted another  
17 in doing so. You must be unanimous as to which if either of  
18 the two alleged firearms the defendant used or carried during  
19 and in relation to the underlying offense.

20 If you're unanimously convinced beyond a reasonable  
21 doubt that Pressure Cooker Bomb No. 3 is a firearm and that the  
22 defendant used or carried it during and in relation to the  
23 crime charged in Count Twenty-Three, and/or aided and abetted  
24 another in doing so, you will then determine whether the  
25 government has proved either of the following two additional

1 elements beyond a reasonable doubt: that the alleged firearm  
2 was discharged or that the alleged firearm was a destructive  
3 device.

4 If you unanimously find beyond a reasonable doubt that  
5 the Ruger P95 9mm semiautomatic handgun is a firearm, as I've  
6 defined the term for you, and the defendant used or carried it  
7 during and in relation to the crime charged in Count  
8 Twenty-Three, and/or aided and abetted another in doing so, you  
9 will then determine whether the government has also proved the  
10 following additional element beyond a reasonable doubt: that  
11 the firearm was discharged.

12 Count Twenty-Six charges the defendant knowingly used  
13 or carried a firearm during and in relation to the crime  
14 charged in Count Twenty-Five and/or aided or abetted another in  
15 doing so. The crime charged in Count Twenty-Five qualifies as  
16 a crime of violence.

17 The indictment alleges that two firearms were used and  
18 carried during and in relation to the offense charged in Count  
19 Twenty-Five. They're identified in the indictment on the  
20 verdict form as Pipe Bomb No. 1 and a Ruger P95 9mm  
21 semiautomatic handgun.

22 To find the defendant guilty, you must unanimously  
23 find beyond a reasonable doubt that the defendant used or  
24 carried at least one of these two alleged firearms during and  
25 in relation to the underlying crime of violence and/or aided

1 and abetted another in doing so. You must be unanimous as to  
2 which, if either, of the two alleged firearms the defendant  
3 used or carried during and in relation to the underlying crime  
4 of violence.

5 If you unanimously find beyond a reasonable doubt that  
6 Pipe Bomb No. 1 is a firearm and the defendant used or carried  
7 it during and in relation to the crime charged in Count  
8 Twenty-Five, and/or aided and abetted another in doing so, you  
9 will then determine whether the government has proved either of  
10 the two following additional elements beyond a reasonable  
11 doubt: that the alleged firearm was discharged and that the  
12 alleged firearm was a destructive device.

13 If you unanimously conclude beyond a reasonable doubt  
14 that the Ruger P95 9mm semiautomatic handgun is a firearm and  
15 the defendant used or carried it during and in relation to the  
16 crime charged in Count Twenty-Five, or aided and abetted  
17 another to do so, you will then determine whether the  
18 government has proved the following additional elements beyond  
19 a reasonable doubt: that the alleged firearm was discharged.

20 Count Twenty-Eight charges the defendant knowingly  
21 used or carried a firearm during and in relation to the crime  
22 charged in Count Twenty-Seven and/or aided and abetted another  
23 in doing so. The crime charged in Count Twenty-Seven qualifies  
24 as a crime of violence. The indictment alleges that two  
25 firearms were used and carried during and in relation to the

1 offense charged in Count Twenty-Seven. They're identified in  
2 the indictment and the verdict form as Pipe Bomb No. 2 and a  
3 Ruger P95 9mm semiautomatic handgun.

4 To find the defendant guilty, you must unanimously  
5 find beyond a reasonable doubt that the defendant used or  
6 carried at least one of these two alleged firearms during and  
7 in relation to the underlying crime of violence and/or aided  
8 and abetted another in doing so. You must be unanimous as to  
9 which, if either, of the two alleged firearms the defendant  
10 used or carried during and in relation to the underlying crime  
11 of violence.

12 If you unanimously find beyond a reasonable doubt that  
13 Pipe Bomb No. 2 is a firearm and the defendant used or carried  
14 it during and in relation to the crime charged in Count  
15 Twenty-Seven, or aided and abetted another in doing so, you'll  
16 then determine whether the government has also proved either of  
17 the following two elements beyond a reasonable doubt: that the  
18 alleged firearm was discharged and that the alleged firearm was  
19 a destructive device.

20 If you unanimously find beyond a reasonable doubt that  
21 the Ruger P95 9mm semiautomatic handgun is a firearm and the  
22 defendant used or carried it during and in relation to the  
23 crime charged in Count Twenty-Seven, and/or aided and abetted  
24 another in doing so, you will then determine whether the  
25 government has also proved the following additional element

1 beyond a reasonable doubt: that the alleged firearm was  
2 discharged.

3 Count Thirty charges the defendant knowingly used or  
4 carried a firearm during and in relation to the crime charged  
5 in Count Twenty-Nine or aided and abetted another in doing so.  
6 The crime charged in Count Twenty-Nine qualifies as a crime of  
7 violence. The indictment alleges that two firearms were used  
8 or carried during and in relation to the offense charged in  
9 Count Twenty-Nine. They're identified in the indictment and  
10 the verdict form as Pipe Bomb No. 3 and a Ruger P95 9mm  
11 semiautomatic handgun.

12 To find the defendant guilty of this count, you must  
13 unanimously find beyond a reasonable doubt that the defendant  
14 used or carried at least one of these two alleged firearms  
15 during and in relation to the underlying crime of violence  
16 and/or aided and abetted another to do so. You must be  
17 unanimous as to which, if either, of the two alleged firearms  
18 the defendant used or carried during and in relation to the  
19 underlying crime of violence.

20 If you unanimously find beyond a reasonable doubt that  
21 the Pipe Bomb No. 3 is a firearm and the defendant used or  
22 carried it during and in relation to the underlying crime  
23 charged in Count Twenty-Nine, and/or aided and abetted another  
24 in doing so, you will then determine whether the government has  
25 also proved either of the following two additional elements



1 beyond a reasonable doubt: that the alleged firearm was  
2 brandished intentionally and that the alleged firearm was a  
3 destructive device.

4 If you unanimously find beyond a reasonable doubt that  
5 the Ruger P95 9mm semiautomatic handgun is a firearm and the  
6 defendant used or carried it during and in relation to the  
7 crime charged in Count Twenty-Nine and/or aided and abetted  
8 another in doing so, you will determine whether the government  
9 has also proved the following additional element beyond a  
10 reasonable doubt: that the alleged firearm was discharged.

11 Counts Seven and Nine charge the defendant with the  
12 crime of bombing a place of public use. You'll recall that I  
13 have instructed you that Count Six charges the defendant with  
14 conspiracy to bomb a place of public use. Counts Seven and  
15 Nine charge the defendant with the substantive crime of bombing  
16 a place of public use and/or aiding and abetting another to do  
17 so.

18 To find the defendant guilty of the crime of bombing a  
19 place of public use, you must find that the government has  
20 proved each of the following four elements beyond a reasonable  
21 doubt: First, the defendant knowingly delivered, placed,  
22 discharged or detonated an explosive in, into or against a  
23 place of public use; second, that the defendant did so  
24 intending to cause death or serious bodily injury, or  
25 alternatively, that the defendant did so with the intent to

1 cause extensive destruction of such place when such destruction  
2 resulted -- where such destruction results in or is likely to  
3 result in major economic loss.

4           You need not find the government has proved both of  
5 these types of intent, but you must unanimously find the  
6 government has proved at least one of them beyond a reasonable  
7 doubt. The third element is that the offense took place in the  
8 United States, and the fourth element is that the offense was  
9 committed in an attempt to compel the United States to do or to  
10 abstain from doing any act.

11           A "place of public use" means those parts of any  
12 building, land, street or other location that are accessible or  
13 open to members of the public whether continuously,  
14 periodically or occasionally, and encompasses any commercial,  
15 business, cultural, historical, entertainment, recreational or  
16 similar place that is so accessible and open to the public.

17           "Serious bodily injury" means bodily injury which  
18 involves: A, a substantial risk of death; B, extreme physical  
19 pain; C, protracted and obvious disfigurement; or, D,  
20 protracted loss or impairment of the function of a bodily  
21 member, organ or mental faculty.

22           For these purposes, an explosive means gunpowders,  
23 powders used for blasting, blasting materials, fuses other than  
24 electric circuit breakers, detonators and any chemical  
25 compounds, chemical mixture or device that contains any

1 oxidizing or combustible units or other ingredients in such  
2 proportions, quantities or packing that ignition by fire or by  
3 detonation of the compound, mixture or device or any part  
4 thereof may cause an explosion in so far that it is designed or  
5 has the capability to cause death, serious bodily injury or  
6 substantial material damage.

7 Count Seven charges the defendant placed a bomb in  
8 front of Marathon Sports on Boylston Street in Boston causing  
9 extensive destruction to Marathon Sports and other places of  
10 public use and/or aided and abetted another in doing so. The  
11 indictment and verdict form refer to this alleged explosive as  
12 Pressure Cooker Bomb No. 1. In Count Seven, the government  
13 alleges an additional element that it must prove beyond a  
14 reasonable doubt: that the offense resulted in the death of  
15 Krystle Marie Campbell.

16 Count Nine charges the defendant bombed a place of  
17 public use by placing a bomb in front of the Forum restaurant  
18 causing extensive destruction to the Forum restaurant and other  
19 places of public use and/or aided and abetted another in doing  
20 so. The indictment and verdict form refer to this alleged  
21 explosive as Pressure Cooker Bomb No. 2.

22 In Count Nine, the government alleges an additional  
23 element that it must prove beyond a reasonable doubt; namely,  
24 that the offense resulted in the death of Lingzi Lu and/or  
25 Martin Richard. For you to find the defendant guilty of this

1 additional element, you must unanimously find beyond a  
2 reasonable doubt that he committed the offense -- that the  
3 offense resulted in the death of at least one of these two  
4 people, and you should consider each separately. And your  
5 determination of which death, if either, resulted must be  
6 unanimous.

7 Counts Eight and Ten charge the defendant with the  
8 crime of using and carrying a firearm during and in relation to  
9 a crime of violence. We went through this with respect to the  
10 crime of violence of use of a weapon of mass destruction. Each  
11 of those counts was paired with a count of using and carrying a  
12 firearm during and in relation to the crime of violence. This  
13 is similar with respect to the crimes charged in Counts Seven  
14 and Nine, is the bombing of a public place. Counts Eight and  
15 Ten allege use of and carrying a firearm during and in relation  
16 to those crimes.

17 So Count Eight charges the defendant knowingly used  
18 and/or carried a firearm during and in relation to the crime  
19 charged in Count Seven and/or aided and abetted another in  
20 doing so. The indictment and verdict form identify the bomb as  
21 Pressure Cooker Bomb No. 1. The crime charged in Count Seven  
22 qualifies as a crime of violence.

23 In Count Eight, the government also alleges three  
24 additional elements, each of which it must prove beyond a  
25 reasonable doubt: that the alleged firearm was discharged,

1 that the alleged firearm was a destructive device, and that the  
2 defendant in the course of committing the offense charged in  
3 Count Eight caused the death of Krystle Marie Campbell through  
4 the use of the firearm and the killing was a murder, and/or  
5 aided and abetted another in causing the killing of Krystle  
6 Marie Campbell through the use of the firearm, and the killing  
7 was a murder.

8 Count Ten charges the defendant knowingly used or  
9 carried a firearm during and in relation to the crime charged  
10 in Count Nine and/or aided and abetted another in doing so. The  
11 indictment and verdict form identify this bomb as Pressure  
12 Cooker Bomb No. 2. The crime charged in Count Nine is a crime  
13 of violence.

14 In Count Ten, the government also alleges three  
15 additional elements that it must prove beyond a reasonable  
16 doubt: that the alleged firearm was discharged, that the  
17 alleged firearm was a destructive device, and that the  
18 defendant in the course of committing the offense charged in  
19 Count Ten caused the death of Lingzi Lu and/or Martin Richard  
20 through the use of the firearm and that the killing was a  
21 murder, and/or aided and abetted another in causing the death  
22 of Lingzi Lu and/or Martin Richard through the use of the  
23 firearm and the killing was a murder.

24 For you to find the defendant guilty of the last  
25 element, you must unanimously find beyond a reasonable doubt

1 that the charged offense resulted in the death of at least one  
2 of the two people identified. You should consider each  
3 separately, and your determination of which death, if either,  
4 resulted from the offense must be an unanimous one.

5 Counts Twelve and Fourteen charge the defendant with  
6 malicious destruction of property. I have already instructed  
7 you that Count Eleven charges the defendant with the conspiracy  
8 to maliciously destroy property. Counts Twelve and Fourteen  
9 charge the defendant with the substantive offense of malicious  
10 destruction of property.

11 To find the defendant guilty of the malicious  
12 destruction of property, you must find the government has  
13 proved each of the following elements beyond a reasonable  
14 doubt: First, the defendant damaged or destroyed or attempted  
15 to damage or destroy by means of fire or an explosive any  
16 building, vehicle or other real or personal property; second,  
17 that the defendant did so maliciously; third, he did so by  
18 means of a fire or explosion; and, fourth, that the building,  
19 vehicle or other real or personal property was used in  
20 interstate or foreign commerce or in any activity affecting  
21 interstate or foreign commerce.

22 Let me define some of those terms. I told you what  
23 "explosive" means. To act maliciously means to act  
24 intentionally or with deliberate disregard of the likelihood  
25 that damage or injury will result. Use in interstate or

1 foreign commerce or in any activity affecting interstate or  
2 foreign commerce means current active employment for commercial  
3 purposes, not merely a passive passing or past connection to  
4 commerce. The property's function must affect interstate  
5 commerce.

6 Count Twelve charges the defendant placed an explosive  
7 bomb in the vicinity of Marathon Sports on Boylston Street in  
8 Boston resulting in a premature end to the Boston Marathon and  
9 damage to Marathon Sports and other business property, and/or  
10 aided and abetted another in doing so. The indictment and  
11 verdict form refer to this alleged explosive as Pressure Cooker  
12 Bomb No. 1.

13 In Count Twelve, the government alleges two other  
14 elements it must prove beyond a reasonable doubt: that the  
15 defendant as a result of his conduct directly or proximally  
16 caused personal injury or created a substantial risk of injury  
17 to any person, and/or aided and abetted another in doing so;  
18 and, second, that the defendant as a result of his conduct  
19 directly or proximally caused the death of Krystle Marie  
20 Campbell and/or purposely aided and abetted another in doing  
21 so.

22 Count Fourteen charges the defendant placed a bomb in  
23 the vicinity of the Forum restaurant on Boylston Street in  
24 Boston resulting in a premature end to the Boston Marathon and  
25 damage to the Forum restaurant and other business property,

1 and/or aided and abetted another in doing so. The indictment  
2 and verdict form refer to this bomb as Pressure Cooker Bomb  
3 No. 2.

4 In Count Fourteen, the government also alleges two  
5 other elements it must prove beyond a reasonable doubt: that  
6 the defendant as a result of his conduct directly or proximally  
7 caused personal injury or created a substantial risk of injury  
8 to any person and/or aided and abetted another in doing so, and  
9 the defendant as a result of his conduct directly or proximally  
10 caused the death of any person.

11 For you to find the defendant guilty of this  
12 additional element, you must find unanimously beyond a  
13 reasonable doubt that the defendant, through his conduct,  
14 directly or proximally caused the death of Lingzi Lu and/or  
15 Martin Richard. You should consider each separately, and your  
16 decision as to which, if either, death resulted from the  
17 defendant's conduct must be a unanimous one.

18 Counts Thirteen and Fifteen charge the defendant with  
19 using and carrying a firearm during and in relation to the  
20 crime of violence alleged in Counts Twelve and Fourteen. Count  
21 Thirteen charges the defendant knowingly used or carried a  
22 firearm during and in relation to the crime charged in Count  
23 Twelve and/or aided and abetted another in doing so. The  
24 indictment and verdict form identify this bomb as Pressure  
25 Cooker Bomb No. 1. The crime charged in Count Twelve is a



1 crime of violence.

2 In Count Thirteen, the government also alleges three  
3 additional elements it must prove beyond a reasonable doubt:  
4 that the alleged firearm was discharged, that the alleged  
5 firearm was a destructive device, and that the defendant in the  
6 course of committing the offense charged in Count Thirteen  
7 caused the death of Krystle Marie Campbell through the use of  
8 the firearm, and the killing was a murder, and/or aided and  
9 abetted another in causing the death of Krystle Marie Campbell  
10 through the use of the firearm, and the killing was a murder.

11 Count Fifteen charges the defendant knowingly used or  
12 carried a firearm during and in relation to the crime of  
13 violence charged in Count Fourteen, and/or aided and abetted  
14 another in doing so. The indictment and verdict form identify  
15 this bomb as Pressure Cooker Bomb No. 2. The crime charged in  
16 Count Fourteen is a crime of violence.

17 In Count Fifteen, the government also alleges three  
18 additional elements it must prove beyond a reasonable doubt:  
19 that the alleged firearm was discharged, that the alleged  
20 firearm was a destructive device, and that the defendant in the  
21 course of committing the offense charged in Count Fifteen  
22 caused the death of Lingzi Lu and/or Martin Richard through the  
23 use of the firearm, and the killing was a murder, and/or aided  
24 and abetted another in causing the death of Lingzi Lu and/or  
25 Martin Richard through use of the firearm, and the killing was

1 a murder.

2 For you to find the defendant guilty of this  
3 additional element, you must unanimously find beyond a  
4 reasonable doubt that the defendant through his conduct  
5 directly or proximally caused the death of Lingzi Lu and/or  
6 Martin Richard. You should consider each separately, and your  
7 determination as to which, if either, was caused by -- either  
8 death was caused by the defendant, your decision must be a  
9 unanimous one.

10 Counts Sixteen, Seventeen and Eighteen charge the  
11 defendant with using and carrying a firearm during and in  
12 relation to a crime of violence. Count Sixteen charges the  
13 defendant knowingly used or carried a firearm identified as a  
14 Ruger P95 9mm semiautomatic handgun during and in relation to  
15 the crime of conspiracy to use a weapon of mass destruction  
16 that is charged in Count One, and/or aided and abetted another  
17 in doing so. The crime charged in Count One qualifies as a  
18 crime of violence.

19 In Count Sixteen, the government also alleges two  
20 additional elements, each of which it must prove beyond a  
21 reasonable doubt: that the alleged firearm was discharged, and  
22 that the defendant caused the death of Officer Sean Collier  
23 through the use of the firearm, and the killing was murder,  
24 and/or that he aided and abetted another in causing the death  
25 of Officer Sean Collier through the use of the firearm, and the

1 killing was a murder.

2 Count 17 likewise charges the defendant knowingly used  
3 or carried a firearm identified as a Ruger P95 9mm  
4 semiautomatic handgun during and in relation to the crime of  
5 conspiracy to bomb a place of public use as charged in Count  
6 Six, and/or aided or abetted another in doing so. The crime  
7 charged in Count Six qualifies as a crime of violence.

8 Like Count Sixteen, Count Seventeen charges two  
9 additional elements the government must prove beyond a  
10 reasonable doubt: that the alleged firearm was discharged, and  
11 that the defendant caused the death of Officer Sean Collier  
12 through the use of the firearm, and the killing was a murder,  
13 and/or that he aided and abetted another in causing the death  
14 of Officer Sean Collier through the use of the firearm, and the  
15 killing was a murder.

16 Similarly, Count Eighteen charges the defendant  
17 knowingly used or carried a firearm identified as a Ruger P95  
18 9mm semiautomatic handgun during and in relation to the crime  
19 of conspiracy to maliciously destroy property as alleged in  
20 Count Eleven, and/or aided and abetted another in doing so.  
21 The crime charged in Count Eleven is a crime of violence.

22 Like Counts Sixteen and Seventeen, Count Eighteen  
23 charges the additional elements that the government must prove  
24 beyond a reasonable doubt: that the alleged firearm was  
25 discharged and that the defendant caused the death of Officer

1 Sean Collier through the use of the firearm and the killing was  
2 a murder, and/or that he aided and abetted another in causing  
3 the death of Officer Sean Collier through the use of the  
4 firearm and the killing was a murder.

5 My instructions I've already given regarding the  
6 elements of the crime of using and carrying a firearm during  
7 and in relation to a crime of violence apply to these Counts  
8 Sixteen, Seventeen and Eighteen, as do my instructions  
9 regarding aiding and abetting. The meaning of the word  
10 "discharge" and the requirements for finding that the firearm  
11 caused the death of a person and the killing was a murder, all  
12 of those instructions apply to Counts Sixteen, Seventeen and  
13 Eighteen.

14 And I remind you, of course, that to find the  
15 defendant guilty of an offense, you must be unanimously  
16 convinced the government has proved each and every element of  
17 the offense beyond a reasonable doubt.

18 As I've previously described, there is another method  
19 by which you may evaluate whether the defendant is guilty under  
20 Counts Sixteen, Seventeen or Eighteen. If you find the  
21 defendant is guilty of one or more of the underlying  
22 conspiracies that are referred to in Count Sixteen, Seventeen  
23 and Eighteen, that is, the conspiracies alleged in Counts One,  
24 Six and Eleven, if you find the defendant guilty of those  
25 conspiracy charges, you may, but of course are not required to,

1 find him guilty of using and carrying a firearm during and in  
2 relation to the crime of conspiracy of which you found him  
3 guilty provided you find beyond a reasonable doubt the  
4 following elements: First, the defendant was guilty of being a  
5 conspirator in the underlying unlawful conspiracy; second, that  
6 his coconspirator used or carried the firearm during and in  
7 relation to the conspiracy; third, the coconspirator did so in  
8 furtherance of the conspiracy; and, fourth, that the defendant  
9 was at the time still an active member of the conspiracy and  
10 had not withdrawn from it; and, fifth and finally, that the  
11 defendant could have reasonably foreseen that the coconspirator  
12 might use or carry the firearm during and in relation to the  
13 conspiracy.

14 If you find all five of those elements to exist beyond  
15 a reasonable doubt, especially the fifth which is important,  
16 the defendant's state of mind, then you may find the defendant  
17 guilty of using and carrying a firearm during and in relation  
18 to the conspiracy even if he did not personally commit the acts  
19 constituting the crime of using and carrying a firearm during  
20 and in relation to the underlying conspiracy. However, if you  
21 are not satisfied of the existence of any one of the five  
22 elements that I've outlined, then you may not find the  
23 defendant guilty under this theory.

24 The same holds true for the additional element that is  
25 charged in Counts Sixteen, Seventeen and Eighteen, namely, that

1 the defendant through the use of the firearm caused the death  
2 of Officer Sean Collier; that is, you may, but are not required  
3 to, find the defendant guilty of that element if you  
4 unanimously conclude beyond a reasonable doubt that the  
5 defendant joined the underlying conspiracy charged in each  
6 count, that a coconspirator used and carried the firearm during  
7 and in relation to the underlying conspiracy, that the firearm  
8 was used to cause the murder of Officer Collier, the killing  
9 was in furtherance of the conspiracy, and the defendant was a  
10 member of the conspiracy at the time the killing occurred, and  
11 the killing was reasonably foreseeable to the defendant.

12 Count Nineteen charges the defendant with carjacking,  
13 specifically alleges the defendant carjacked a Mercedes SUV  
14 from Dun Meng and/or aided and abetted another in doing so.  
15 For you to find the defendant guilty of carjacking, you must  
16 unanimously conclude that the government has proved the  
17 following four elements beyond a reasonable doubt: First, the  
18 defendant took a motor vehicle from Dun Meng; second, the  
19 defendant took the motor vehicle through the use of force,  
20 violence or intimidation; third, the defendant intended to  
21 cause death or serious bodily harm at the time he took the  
22 motor vehicle; and fourth, that the motor vehicle was  
23 transported, shipped or received in interstate or foreign  
24 commerce.

25 A person who takes a motor vehicle from the person or

1 presence of another acts with the intent to cause death or  
2 serious bodily harm if the person intends to seriously harm or  
3 kill the driver, if necessary, to steal the car. You may  
4 infer, although you are not required to do so, that a person  
5 acted with such intent if he demanded the car at gunpoint or  
6 used verbal threats. You may also infer, although you're not  
7 required to do so, the person acted with such intent if he  
8 willfully and knowingly participated in the initiation of the  
9 carjacking knowing that another intended to demand the car at  
10 gunpoint.

11 As to Count Nineteen, the government also alleges and  
12 must prove beyond a reasonable doubt that the carjacking  
13 resulted in the serious bodily injury to Officer Richard  
14 Donohue. "Serious bodily injury" means bodily injury that  
15 involves a substantial risk of death or extreme physical pain  
16 or protracted and obvious disfigurement or protracted loss or  
17 impairment of the function of a bodily member, organ or mental  
18 faculty. Injury may be said to have resulted from a carjacking  
19 even if it did not result from the taking of the car so long as  
20 it was caused by the carjacker while he still retained the car.

21 Count Twenty charges the defendant with the crime of  
22 using and carrying a firearm during and in relation to the  
23 crime of violence that is charged in Count Nineteen, that is  
24 carjacking. Specifically, Count Twenty charges the defendant  
25 knowingly used or carried a firearm identified as a Ruger P95

1 9mm semiautomatic handgun during and in relation to the crime  
2 of carjacking that is charged in Count Nineteen, and/or aided  
3 and abetted another in doing so. The crime charged in Count  
4 Nineteen qualifies as a crime of violence.

5 The instructions I previously gave you with respect to  
6 using and carrying a firearm during and in relation to a crime  
7 of violence apply with equal force to this count.

8 With respect to Count Twenty, the government seeks to  
9 prove an additional element beyond a reasonable doubt, namely,  
10 that the firearm was brandished. My previous instruction about  
11 the definition of "brandished" applies here.

12 Count Twenty-One charges the defendant with robbery  
13 affecting interstate commerce. Specifically, Count Twenty-One  
14 charges the defendant committed a robbery affecting interstate  
15 commerce by withdrawing \$800 from Dun Meng's bank account on  
16 April 18, 2013, at an ATM in Watertown, and/or aided and  
17 abetted another in doing so. To find the person guilty of this  
18 charge, you must unanimously find beyond a reasonable doubt  
19 that the government has proved the following elements: First,  
20 that the defendant knowingly and willfully took property from  
21 Dun Meng; second, that he did so by robbery; third, that the  
22 robbery affected interstate commerce.

23 To act willfully in this context is to act voluntarily  
24 and intelligently with the specific intent that the  
25 underlying -- that the crime be committed, that is, with a bad



1 purpose either to disobey or disregard the law and not by  
2 accident, ignorance or mistake.

3 Robbery in this context means unlawfully taking or  
4 obtaining personal property from another against his or her  
5 will by means of actual or threatened force or violence or fear  
6 of injury to the person or property or to property in his  
7 custody or possession.

8 It is only necessary the government prove beyond a  
9 reasonable doubt that there is a realistic probability that the  
10 acts committed by the defendant as charged in the indictment  
11 had some minimal effect on interstate commerce. It is not  
12 necessary for you to find the defendant knew or intended that  
13 his actions would affect interstate commerce.

14 Count Twenty-Two charges the defendant with using and  
15 carrying a firearm during and in relation to a crime of  
16 violence, in this case, the crime of robbery affecting  
17 interstate commerce that is charged in Count Twenty-One, or  
18 aiding and abetting another in doing so. The crime charged in  
19 Count Twenty-One, the robbery, is a crime of violence. I've  
20 previously instructed you the elements of the crime of using  
21 and carrying a firearm during and in relation to a crime of  
22 violence, and those apply here as well.

23 With respect to Count Twenty-Two, the government seeks  
24 to prove an additional element beyond a reasonable doubt;  
25 namely, that the firearm was brandished. And I've previously

1 instructed you about brandishing.

2 Those are the elements of the offenses. And as I say,  
3 you will have the instructions with you and you can go through  
4 them again as necessary as you think about each of the counts  
5 in the indictment. That concludes my opening part of my  
6 instructions. I'll have more to say later.

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## C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

Date: 4/15/15